

California Regional Water Quality Control Board
North Coast Region

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R1-2002-0054

FOR

VIOLATIONS OF
CALIFORNIA WATER CODE SECTION 13267(b)
ORDER ISSUED MARCH 14, 2002

WDID NO. 1B85026RHUM
NPDES NO. CA0024571

FAIRHAVEN POWER COMPANY

Humboldt County

This complaint to assess a Civil Liability pursuant to California Water Code Sections 13268 and 13323 is issued to Fairhaven Power Company (hereinafter Discharger), for violations of an Order issued pursuant to California Water Code Section 13267(b) for the period April 12, 2002, to April 30, 2002.

The Executive Officer of the Regional Water Board finds the following:

1. On December 5, 1996, the North Coast Regional Water Quality Control Board, (hereinafter Regional Water Board), adopted Waste Discharge Requirements Order 96-92, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0024571 (hereinafter Order 96-92), for the Fairhaven Power Company power plant in Fairhaven, California.
2. Order 96-92 states that:

Fly ash from the dust collector and precipitator and bottom ash from the boiler are disposed at the City Garbage Company Landfill or used as a soil amendment on farmland. The total quantity of ash produced is 24 tons per day. Both fly ash and bottom ash are stored on-site in a controlled area during the winter period when it is not possible to place it on farmlands. During the winter, the ash is covered with plastic sheeting and contained by a concrete perimeter wall.
3. The Cummings Road Landfill is in the process of closing and stopped accepting waste as of June 16, 2000. Since that time, the Discharger has been stockpiling bottom ash in an unpaved area in the northwest corner of its property.

4. The Discharger dismantled the permitted fly ash storage area without obtaining prior approval from the Regional Water Board and has constructed an inferior fly ash storage area. The fly ash is not contained by the new perimeter and there is no cover to prevent windborne transport or rainfall infiltration.
5. The method of storage of bottom ash is considered a “waste pile” under Title 27 of the California Code of Regulations (27 CCR). Per 27 CCR, waste piles must have a liner precluding the leaching of the waste into the groundwater, and a cover which serves to minimize the quantity of leachate generated by shielding the waste from storm water.
6. The Regional Water Board informed the Discharger, in a letter dated July 26, 2001, that its method of handling bottom ash was unacceptable and that removal of the waste is necessary.
7. Environet (the Discharger’s consultant), Lanahan & Reily (the Discharger’s attorney), and Regional Water Board staff met on November 27, 2001 and agreed that a plan for bringing the ash waste management into compliance with 27 CCR would be submitted to the Regional Water Board by December 20, 2001.
8. Environet submitted a report on January 9, 2002, more than two weeks after the deadline. A letter from Regional Water Board staff, dated February 27, 2002, informed the Discharger that the report failed to identify a feasible method of managing the bottom ash in a timely manner and was, therefore, unacceptable.
9. On March 14, 2002, The North Coast Regional Water Quality Control Board Executive Officer issued an Order pursuant to Section 13267(b) of the California Water Code (CWC) requiring that a technical report be submitted to the Regional Water Board which would describe an acceptable short-term plan for storing and disposing of the fly ash and bottom ash generated at the Discharger’s facility. The Order directed that the plan outline a way to bring the facility into compliance by June 15, 2002, and to keep the facility in compliance until a long-term plan could be developed and implemented. The Order specified that the report was due April 12, 2002.
10. SCS Engineers submitted a report on behalf of the Discharger on April 12, 2002. The report describes a “general approach” to managing the ash, and does not identify concrete steps that will be taken to bring the facility into compliance by June 15, 2002. The report stated that the specific approach would be submitted May 15, 2002.

11. On April 18, 2002, Environet met with Regional Water Board staff to discuss the report that was submitted. Regional Water Board staff informed Environet that the submitted report was unacceptable.
12. Failure to submit a report required by a CWC 13267(b) Order, or submittal of an inadequate or late report, is a violation of CWC 13267 and is subject to administrative civil liabilities of up to \$1,000 per day of violation, as described in CWC 13268.
13. The total amount of penalties during the period April 13, 2002, through May 1, 2002, is \$19,000.
14. Penalties will continue to accrue until an acceptable report has been submitted, which describes a feasible short-term plan to manage the fly ash and bottom ash in compliance with 27 CCR.

FAIRHAVEN POWER COMPANY IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Water Board proposes that the Discharger be assessed a penalty in the amount of \$19,000 dollars.
2. The Regional Water Board shall hold a hearing on June 27, 2002, to consider imposing this penalty unless the Discharger agrees to waive the hearing and pay the penalty of \$19,000 in full.
3. The Discharger may waive the right to a hearing. If you wish to waive the hearing, please check and sign the attached waiver and return it and a check made payable to the State Water Resources Control Board for the full amount of the penalty to the Regional Water Board's office at the letterhead address, by June 3, 2002.

Susan A. Warner, Executive Officer

May 2, 2002

(FPC ACLC)